

The Herald and News

JURY LAWS NULL AND VOID

THE SUPREME COURT RENDERS A UNANIMOUS OPINION ON THE SUBJECT.

Legislation Given an Old Case—The Constitution Must Be Given Due Regard—Text of the Opinion.

[The State, 14th.]

The State supreme court has sustained Circuit Judge Gary's opinion that the jury laws of the State are unconstitutional, null and void, in that they are special and not general laws as required by the constitution, and the legislature is thus given an object lesson which should prevent the introduction of the usual round of bills that are clearly in violation of the constitutional provision.

The court renders a unanimous opinion, the paper being written by Justice Eugene B. Gary. The case is that of the State vs. A. J. Queen, et al., from Cherokee county.

The opinion in the other case on the same subject, that of the State vs. Franklin, affirms the judgment of the court below—Judge Ernest Gary's decision—and merely states that all points are covered in the opinion in the McQueen case.

The full text of the opinion is as follows:

The appellants were tried and convicted of riot and assault and battery with intent to kill at the June, 1901, term of court for Cherokee county.

"Before the jury was selected, the attorney for the appellants, made a motion to quash the array of two grounds, (1) because there was no jury law warranting the drawing of a jury for Cherokee county, and (2) because the jury law, if any, was repugnant to that provision of the constitution which prohibits special legislation."

This honor, the circuit judge, overruled the motion whereupon the defendants appealed upon the following exception:

"Because his honor erred in holding that the jury law of 1900, 13 Statutes 315 entitled: 'An act to amend sections 2336 and 2337 of the general statutes relating to the drawing and term of service of jurors, in the circuit courts of this State and to validate the jury lists already prepared,' is not repugnant to, or in violation of subdivisions 8, 11 and 12 of section 34, article 3, constitution 1895, in as much as said jury law contains special and local provisions allowing the counties of Greenwood, Abbeville, Edgefield, Orangeburg and Lexington and Aiken to summon and empanel jurors in those counties, and the county of Charleston has a separate and distinct act at page 320, 1900. All of which violates the afore said constitutional provision."

Section 1 of the act first mentioned in the exception contains the following provisions:

"That section 2336 of the general statutes of 1882 now known as section 2375 of the revised statutes, be amended so as to read as follows: Section 2375. The clerks of the court in each county in this State shall, on or before the 5th day of January of each year, prepare a state-

ment and deliver the same to the county board of commissioners of the number of jurors that will be required to be in attendance for each term of the court, to be held in the county during the ensuing year, and the county board of commissioners shall in each year during the month of January prepare a list of such legally qualified voters of their respective counties, not absolutely exempt, as they may think well qualified to serve as jurors, being persons of good moral character, of sound judgment, and free from all legal exceptions, to be selected from the county at large, without regard to whether such persons reside in seven miles of the court house or not; except in the counties of Spartanburg and Orangeburg, the list shall be prepared in the month of December, and the list so prepared by each county board of commissioners shall contain twice the number as reported by the clerk of the court: Provided, that in Aiken county the jury shall be listed and drawn as provided by the county government law. Provided, that in the counties of Abbeville, Edgefield, Lexington and Greenwood the jury list shall be prepared in the following manner, the list in Abbeville to be one thousand names, to wit: *

Art. III, section 34 of the constitution provides: "The general assembly of this State shall not enact local or special laws

concerning any of the following purposes, to wit: 1. To change the name of persons or places. 2. To lay out, open, alter or work roads or highways. 3. To incorporate cities, towns or villages, or change, amend or extend the charter thereof. 4. To incorporate educational, religious, charitable, social, manufacturing or banking institutions not under control of the State, or amend or extend the charters thereof. 5. To incorporate school districts. 6. To authorize the adoption or legitimation of children. 7. To provide for the protection of game. 8. To summon and empanel grand or petit jurors. 9. To provide for the age at which citizens shall be subject to road or other public duty. 10. To fix the amount or manner of compensation to be paid to any county officer, except that the laws may be so made as to grade the compensation in proportion to the population and necessary service required. 11. In all other cases, where a general law can be made applicable, no special law shall be enacted. 12. The general assembly shall forthwith enact general laws concerning said subjects for said purposes, which shall be uniform in their operation. Provided, that nothing contained in this section shall prohibit the general assembly from enacting special provisions in general laws."

In determining the constitutionality of the foregoing Act it will be necessary to construe the words "to summon and empanel jurors."

It is contended by the respondent that they do not include the listing and drawing of jurors.

In reaching a conclusion upon this question, we must look to the evil which the constitution wished to uproot.

The jury laws throughout the State were various and were productive of great confusion and uncertainty.

The object of the constitution was to make the jury law uniform throughout the entire State, and this can only be accomplished by interpreting the words "summon and empanel" to include listing and drawing of jurors.

Having reached this conclusion we will next consider whether the act can be considered as a special provision in a general law.

While the act purports to be only an amendment it is, in effect, a substitute for the law then by force on this subject, and deals with the entire question of listing and drawing jurors. It must therefore be construed as an independent act, and can not be regarded as a special provision in a general law.

The next question that will be considered is whether it can be construed to be a valid general law.

In Dean vs. Spartanburg, 59 S. C. 110, the court says: "In order that a law may be general it must be of force in every county in the State, and while it may contain special provisions making its effect different in certain counties those counties can not be exempt from its entire operation."

The provision of the act that "in Aiken county the jury shall be listed and drawn as provided by the county government law" shows that it was not intended to be of force in that county.

The provision that in the counties of Abbeville, Edgefield, Lexington and Greenwood the jury list should be prepared in the manner therein set forth shows that the operation of the act was not uniform throughout the State. But construing the act as an amendment it cannot be declared to be constitutional, for the reason that it substantially changes the general law as to jurors, and prevents uniformity in all the counties of the State upon that subject. Even if it should be contended that this is a special provision in a general law, it could not be construed to be constitutional, as it prevents in a substantial manner uniformity in the jury law throughout the State.

The appellants also contend that the county of Charleston has a separate and distinct act at page 320, 1900, which violates the aforesaid constitutional provision. Even contending this to be the fact, it could not have any effect in determining whether the first act hereinbefore mentioned was constitutional, and its consideration is immaterial. These views are not inconsistent with the ruling in Carolina Grocery Co. vs. Burnett, 61 S. C. 205, as that case did not arise under either of the first ten subdivisions of article III, section 34; by reference to which it will be seen that the main object was to secure uniformity as to the subjects therein mentioned, and any legislation relating to those subjects which substantially militates against uniformity must necessarily be declared unconstitutional.

It is the judgment of this court that the judgment of the circuit court be reversed, and the case remanded for a new trial.

USE OF PASSES IS STILL PROHIBITED.

GOVERNOR VETOES THE ACT AND HOUSE SUSTAINS HIM.

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(The State, 15th.)

The governor's message vetoing the act repealing the anti free pass act presented yesterday reads as follows: To the Speaker and Members of the House of Representatives:

I beg to return to you without my approval act No. 129 to "Repeal an act entitled 'an act to prevent the use of a free pass, express or telegraph frank on any railroad by any United States Senator or member of congress from his State, or by any member of the general assembly of this State, or by any State or county official, or by any judge of a court of record in this State.' Approved December 22, A. D. 1891."

This act was passed at your last session, but was not ratified and turned over to us until the last day of the session and, therefore, could receive no consideration until after your adjournment.

The act which the one under consideration purports to repeal was passed in response to a popular demand to remove the legislator and the official, as far as possible, from corporate power and influence. It was not entirely a factional measure, though enacted during the time when factional feeling ran high. It had the support of members of all factions at that time and was enacted for the public weal. I do not know of any demand or any good reason why it should be repealed, and have therefore withheld my approval from the act repealing it. The system of distributing free passes by railroads among the members of the legislature and other officials before this act was passed prohibiting it was pernicious, and while I would not for a moment be understood as saying or intimating that any legislator or other official, State or county, could be unduly influenced by receiving a free pass, yet it should be remembered that we are all human and must feel kindly to that man or corporation, the recipient of whose favors we are. These corporations are already very powerful and wield great influence on legislation. Why should a frank or a free pass be given to a man as State official or legislator when it would not be thought of so long as he remained a private citizen. Legislation is frequently had affecting these corporations and laws already made affecting them have to be executed. It is best for the public service that the official and the legislator be entirely free to act with entire impartiality in making and executing the laws. He should be able at all times to hold the scales of justice with an even hand, remembering always the rights of the corporations as well as the rights of the people. Believing this can be better done by not accepting favors from the corporations, and therefore not being under obligations to them, however small the obligation, I beg to return to you the repealing act without my approval and signature. Respectfully,

M. B. McSweeney,

Governor.

The motion of Mr. Spears of Darlington to pass the act over the veto was voted upon by the house at once. It required 83 votes to do this. When the vote was counted it was found that the friends of the measure had lost, getting the required figures, but not in the proper order—83. The vote on the motion was as follows: Ayes—33; Nays—64. The Newberry delegation voted as follows: Ayes—Dominick; Nays—Banks and Kibler.

The following special message was also sent to the house on the other "held up" act. There were 102 votes against passing the act over the veto and none for it:

January 11, 1902.

To the Speaker and Members of the House of Representatives:

I beg to return without my signature act No. 103, passed by you at the last session, and which originated in the house of representatives. "To provide for the establishment of a new school district in the county of Anderson." Believing that it was in violation of the constitution of the State, I submitted it to the attorney general's office and requested an opinion on that point. The reply of the attorney general's office is as follows and clearly states why it should not receive the approval of the Governor.

Very respectfully,
U. N. Gunter, Jr.,
Assistant Attorney General.

I trust it will not be improper again to call your attention to the importance of being guarded and careful about placing upon the statute books acts which are directly in the face of the constitution. The constitution forbids the passage of laws of a local or special nature and the supreme court has frequently held them unconstitutional.

Respectfully,
M. B. McSweeney,
Governor.

The Bank of Butler, Ga., was robbed a few nights ago of \$2,000. The burglars escaped.

February 21, 1901.

His excellency, M. B. McSweeney: Dear Sir: Your report for the consideration of this office, act No. 103 passed by the recent general assembly purporting "To provide for the establishment of a new school district in the county of Anderson," and request to be advised as to the constitutionality of such an act.

From an inspection of the body of the act it is obvious that the above title correctly sets forth the purpose of the act. That the act is repugnant to the spirit of the constitution and in direct contravention of the letter of that instrument there can be no question. The strongest evidence is to quote article 3, section 34, of the constitution of 1895: "The general assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes to wit: V. To incorporate school districts."

While there can be no mistake as to the meaning of the above phraseology, we have cumulative evidence as to the correctness of this conclusion in article 11, section 5, of the constitution which provides for a division of counties into suitable districts and the manner of forming them. Legislative action for the formation of a particular school district is not only not contemplated by this section, but positively repugnant thereto.

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A few days ago a valuable necklace was stolen from the Woman's building, Charleston Exposition. The thief has been arrested in New York and the necklace recovered.

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Don't let the top of your jelly cans preserve your food in the old-fashioned way. Seal them with the new, quick, absolutely sure way—by a thin coating of Pure Paraffine. It is not a fat or oil. It is light and clear and does not become rancid. Useful in a dozen other ways about the house. Sold everywhere. Made by STANDARD OIL CO.

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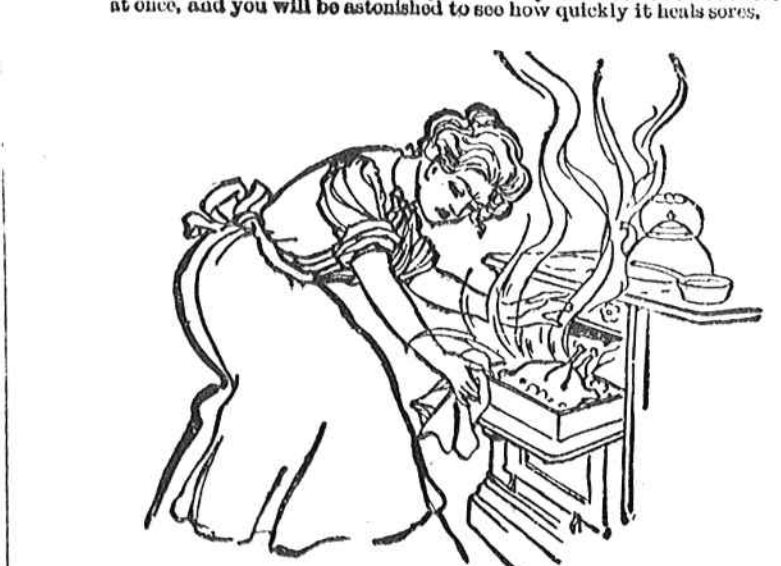
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It gives immediate relief. Get a piece of soft old linen cloth, saturate it with this liniment and bind loosely upon the wound. You can have no adequate idea what an excellent remedy this is for a burn until you have tried it.

A FOWL TIP. If you have a bird afflicted with Roup or any other poultry disease use Mexican Mustang Liniment. It is called a STANDARD remedy by poultry breeders.

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